Supreme Court of the United States

OCTOBER TERM, 1952

NO. 192

GEORGE H. TAYLOR *Petitioner*

VS.

COMMONWEALTH OF KENTUCKY *Respondent*

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This proceeding is a belated sequel to the litigation which was before the Court of Appeals of Kentucky in *Eastern Kentucky Coal Lands Corporation v. Commonwealth, 127 Ky. 667, 106 S. W. 260, 108 S. W. 1138*, and *Eastern Kentucky Coal Lands Corp. v. Commonwealth, 111 S. W. 362, 33 Ky. L. Rep. 857*, and which (with the related case of *Kentucky Union Company v. Commonwealth, 128 Ky. 610, 108 S. W. 931, 110 S. W. 398)* was determined by this Court in *Kentucky Union Company v. Commonwealth of Kentucky, 219 U. S. 140, 55 L. Ed. 137.* A subsequent chapter was written by the Court of Appeals, Sixth Circuit, in *Pen-Ken Gas & Oil Corp. v. Warfield Natural Gas Co., 137 Fed. (2) 871* (cer. den. *320 U. S. 800, 88 L. Ed. 483).*

The petition for certiorari necessitates a consideration of the provisions of the so-called Forfeiture Act of 1906 of the Legislature of Kentucky (Art. 3, Chap. 22, Acts of 1906, Sections 4076b to 4076k, Ky. Stats. 1936 Edition). The details of the statute are fully set out in *219 U. S. 140, 31 S. Ct. 171, 55 L. Ed., 137*, and in *127 Ky. 667, 106 S. W. 260*, and its objects and purposes are fully discussed in the latter case. It is sufficient to here state that old land grants of Virginia and Kentucky had for years stifled industrial development of the eastern part of Kentucky, and its minerals and forests could not be made available for its people until its land titles in this area were stabilized; the courts, under their common law and equity powers, had been impotent to overcome the chaos caused by the overlapping and conflicting paper titles to the lands in the eastern part of the Commonwealth and the legislature proposed to use the power of the state to forfeit lands for the nonpayment of taxes as a means to eliminate this evil. The aforesaid Act of 1906 was the result. The constitutionality of the Act was upheld by the Court of Appeals of Kentucky and by this Court in the above cited cases.

The instant proceeding grows out of the suit which was filed in the Circuit Court of Pike County, Kentucky by the Commonwealth of Kentucky under the provisions of the aforesaid Act of 1906, for the purpose of forfeiting numerous old Virginia land grants, among them the so-called Haskell grant which covered approximately 300,000 acres of land in Pike and other counties of Eastern Kentucky. A judgment of forfeiture was entered in this case on Feb-

ruary 14, 1908 (pp. 187-205, R), which judgment was affirmed by the Court of Appeals of Kentucky *(111 S. W. 362, 33 Ky. L. Rep. 857)* and by this Court *(219 U. S. 140, 31 S. Ct. 171, 55 L. Ed. 137)*.

On May 10, 1947 (thirty-nine years after the entry of the aforesaid judgment of forfeiture) the petitioner, Taylor filed in the Pike Circuit Court his motion (p. 3, R) asking for an order of sale of the tract of land described in the petition as Tract No. 21, and known as the Haskell patent (p. 159, R), one of the grants forfeited to the Commonwealth of Kentucky by the judgment of February 14, 1908 (p. 204, R). This motion was based on Section 7 of the Act of 1906 which Section provided for the sale of all title and claim to the land forfeited to the Commonwealth, which was not purchased back by the owner or claimant under the provisions of Section 4 of the Act, *or which was not vested in the occupant of the land as provided in Section 6 of the Act;* it was further provided by Section 7 that the money realized from such sale should be first applied to the payment of the costs of the original suit, then to the payment of the state and county taxes with interest and penalties, and the remainder to the former owner or claimant. It should be here emphasized that from the date of the entry of the judgment in the original action (February 14, 1908) until the filing of the aforesaid motion for an order of sale on May 10, 1947, no steps of any kind were taken in the case and in 1911 it was stricken from the docket of the Pike Circuit Court.

The motion for an order of sale was overruled by the Circuit Court on May 6, 1947 (p. 19, R.), whereupon the petitioner herein brought mandamus

proceedings in the Kentucky Court of Appeals against the judge of the Pike Circuit Court to require him to enter the order of sale, but mandamus was refused as not being the proper remedy,—see *Taylor v. Stephenson, 309 Ky. 68, 215 S. W. (2) 947.*

Thereafter an appeal was taken to the Court of Appeals from the order of the Circuit Court. On December 1, 1950, the Court of Appeals handed down an opinion reversing the Circuit Court with directions to sustain the motion for an order of sale (pp. 42-47, R). On rehearing, this opinion was withdrawn and on December 6, 1951, the Court of Appeals affirmed the ruling of the Circuit Court, that opinion being reported in *246 S. W. (2) 981*, and reprinted in the record herein at pp. 49-60.

I

NO GROUNDS EXIST HEREIN FOR THE GRANTING OF CERTIORARI

The ruling of the Court of Appeals of Kentucky, to which the petition for certiorari is directed, was based entirely upon the ground that the failure of the petitioner to assert, within a reasonable time, his claim of right to have the land sold and further proceedings taken under the judgment of forfeiture entered thirty-nine years previous to the filing of the motion, constituted an estoppel. Such decision involved only the construction of a state statute, and the determination of the law of the state, i. e., whether the asserted right of the petitioner was barred by the defense of laches. Such determination involves no substantial federal question. It was so held in *Moran v.*

Horsky, 178 U. S. 205, 44 L. Ed. 1038, wherein Mr. Justice Brewer wrote:

> "The supreme court of the state affirmed the decree of the trial court primarily on the ground of laches. If this be an independent ground, involving no question under the Federal statutes, the decision of the supreme court must be sustained and the writ of error dismissed."

To the same effect are *Pierce v. Somerset Railway, 171 U. S. 641, 43 L. Ed. 316; Gaar, Scott & Co. v. Shannon, 223 U. S. 468, 56 L. Ed. 510; Preston v. City of Chicago, 226 U. S. 447, 57 L. Ed. 293; Wood v. Chesborough, 228 U. S. 672, 57 L. Ed. 1018; Enterprise Irrigation Dist. v. Farmers Mutual Canal Co., 243 U. S. 157, 61 L. Ed. 644; Marrow v. Brinkley, 129 U. S. 178, 32 L. Ed. 654.*

It is submitted that there exists herein no ground for certiorari under either *Section 1257, Title 28, U. S. C. A.*, or *Rule 38, Supreme Court Rules.*

II

THE MERITS OF THE CASE

Independent of the question of jurisdiction, it is manifest that there is no error in the ruling of the Court of Appeals of Kentucky. The facts that call for the application of the defense of laches are so fully and convincingly set out in the opinion of the Kentucky court *(246 S. W. (2) 981, 986)*, that further elaboration is unnecessary.

The rule applied by the Court of Appeals was stated by this Court in *Moran v. Horsky*, supra, as follows:

> "Indeed, if the matter of laches can be recognized at all, it is difficult, independently of the question of jurisdiction, to perceive any error in the ruling of the state supreme court. One who, having an inchoate right to property, abandons it for fourteen years, permits others to acquire apparent title, and deal with it as theirs, and as though he had no right, does not appeal to the favorable consideration of a court of equity. We need only refer to the many cases decided in this court and elsewhere, that a neglected right, if neglected too long, must be treated as an abandoned right which no court will enforce. See, among others, Felix v. Patrick, 145 U. S. 317, 36 L. Ed. 719, 12 Sup. Ct. Rep. 862; Galliher v. Cadwell, 145 U. S. 368, 36 L. Ed. 738, 12 Sup. Ct. Rep. 873, and cases cited in the opinion. There always comes a time when the best of rights will, by reason of neglect, pass beyond the protecting reach of the hands of equity, and the present case fully illustrates that proposition."

Apparently, it is the contention of the petitioner that he has been deprived of his right to demand a sale of the forfeited land without *office found*. But such right was not destroyed by any act of the respondent; it was lost as the result of the petitioner's own inactivity and neglect, i. e., his failure to assert such right for a period of thirty-nine years. As was succinctly said in the last cited case, "a neglected right, if neglected too long, must be treated as an abandoned right which no court will enforce".

It is to be noted that the Kentucky court expressly held that the petitioner's admitted original right to have demanded a sale of the forfeited land "could not be abrogated or extinguished" by the subsequent repeal of the Forfeiture Act of 1906. This was the only possible federal question involved in the case, and it was decided in favor of the petitioner.

For the foregoing reasons it is respectively submitted that the petition for writ of certiorari herein should be denied.

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